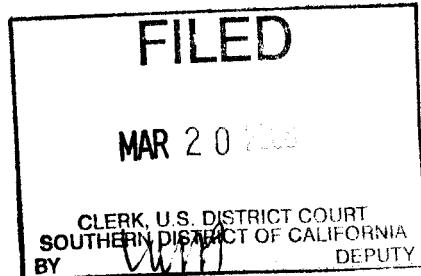


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7 UNITED STATES OF AMERICA



UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) Magistrate Case No. 08MJ0710

Plaintiff.

Magistrate Case No. 08MJ0710

**STIPULATION OF FACT AND JOINT
MOTION FOR RELEASE OF
MATERIAL WITNESS(ES) AND
ORDER THEREON**

Defendant.

(Pre-Indictment Fast-Track Program)

16 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES
17 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Caroline
18 P. Han, Assistant United States Attorney, and defendant ORLANDO ROBLES-VALENCIA, by and
19 through and with the advice and consent of defense counsel, Joseph M. McMullen, that:

20 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing
21 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,
22 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead
23 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count
24 of Bringing in Aliens Without Presentation and Aiding and Abetting, in violation of 8 U.S.C.
25 § 1324(a)(2)(B)(iii) and 18 U.S.C. § 2.

26 //

27 //

28 | CPH:lg:3/10/08

1 2. Defendant acknowledges receipt of a plea agreement in this case and agrees to
 2 provide the signed, original plea agreement to the Government not later than five business days
 3 before the disposition date set by the Court.

4 3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or
 5 before **April 7, 2008**.

6 4. The material witnesses, Eduardo Mora-Hernandez, Renato Gonzalez-Vasquez and
 7 Irma Escalante-Pena, in this case:

- 8 a. Are aliens with no lawful right to enter or remain in the United States;
- 9 b. Entered or attempted to enter the United States illegally on or about
 10 March 5, 2008;
- 11 c. Were found in the trunk of a vehicle driven by defendant at the San Ysidro,
 12 California, Port of Entry (POE), and that defendant knew or acted in reckless disregard of the fact
 13 that they were aliens with no lawful right to enter or remain in the United States;
- 14 d. Were paying an unknown amount up to \$3,000 to others to be brought into
 15 the United States illegally and/or transported illegally to their destination therein; and,
- 16 e. May be released and remanded immediately to the Department of Homeland
 17 Security for return to their country of origin.

18 5. After the material witnesses are ordered released by the Court pursuant to this
 19 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any
 20 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any
 21 proceeding, including, but not limited to, motion hearings, trial, sentencing, appeal or collateral
 22 attack, that:

- 23 a. The stipulated facts set forth in paragraph 4 above shall be admitted as
 24 substantive evidence;
- 25 b. The United States may elicit hearsay testimony from arresting agents
 26 regarding any statements made by the material witness(es) provided in discovery, and such
 27 testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements
 28 against interest of (an) unavailable witness(es); and,

1 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
2 “testimonial” hearsay statements are not admissible against a defendant unless defendant confronted
3 and cross-examined the witness(es) who made the “testimonial” hearsay statements, defendant
4 waives the right to confront and cross-examine the material witness(es) in this case.

5 6. By signing this stipulation and joint motion, defendant certifies that defendant has
6 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
7 further that defendant has discussed the terms of this stipulation and joint motion with defense
8 counsel and fully understands its meaning and effect.

9 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
10 immediate release and remand of the above-named material witness(es) to the Department of
11 Homeland Security for return to their country of origin.

12 It is STIPULATED AND AGREED this date.

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

16 Dated: 3/20/08
17

KAREN P. HEWITT
United States Attorney


[Handwritten signature of Karen P. Hewitt, appearing as a large, stylized 'K' and 'H' intertwined with other loops.]

CAROLINE P. HAN
Assistant United States Attorney


[Handwritten signature of Caroline P. Han, appearing as a large, stylized 'C' and 'H' intertwined with other loops.]

19 Dated: 3-18-08
20

JOSEPH M. McMULLEN
Defense Counsel for
ORLANDO ROBLES-VALENCIA

23 Dated: 3-18-08.


ORLANDO ROBLES-VALENCIA
Defendant

28 Stipulation of Fact and Joint Motion for Release of
Material Witness(es) And Order Thereon in
United States v. Orlando Robles-Valencia

ORDER

Upon joint application and motion of the parties, and for good cause shown,
THE STIPULATION is admitted into evidence, and,
IT IS ORDERED that the above-named material witnesses be released and remanded
forthwith to the Department of Homeland Security for return to their country of origin.

SO ORDERED.

Dated: 3/20/08


United States Magistrate Judge